

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN L. RISNER,)	CASE NO. 1:06 CV 1953
)	
Plaintiff,)	
)	
-vs-)	<u>ORDER ADOPTING REPORT AND</u>
)	<u>RECOMMENDATION AND GRANTING</u>
OHIO DEPARTMENT OF)	<u>IN PART AND DENYING IN PART</u>
REHABILITATION AND CORRECTION,)	<u>DEFENDANTS' MOTION FOR</u>
et al.,)	<u>JUDGMENT ON THE PLEADINGS</u>
)	
Defendants.)	

UNITED STATES DISTRICT COURT JUDGE LESLEY WELLS

Plaintiff John L. Risner brought this action against the Ohio Department of Rehabilitation and Correction's ("ODRC") , Sharon Haines, Jill Goldhart, and Harry Hageman, alleging discrimination in violation of the Uniform Services Employment and Re-Employment Rights Act ("USERRA"), 38 U.S.C. § 4301, et seq. (Doc. 1). The matter was referred to Magistrate Judge Kenneth S. McHargh on 31 March 2008 (Doc. 23), pursuant to 28 U.S.C. § 636 (b)(1)(B), for a Report and Recommendation ("R&R") on defendants' Motion for Judgment on the Pleadings. (Doc. 14).

Magistrate Judge McHargh's thorough and carefully drawn R&R advises that the defendants' Motion be granted in part and denied in part. At this juncture of the proceedings, viewing the allegations in the Complaint in the light most favorable to Mr. Risner, the R&R finds the broad language of USERRA, 38 U.S.C. § 4303(4),

encompasses potential liability for damages as to defendants Sharon Haines and Harry Hageman in their individual capacities.¹ (R&R, pp. 16-20). The R&R also advises that Mr. Risner's claim against defendant ODRC be dismissed as barred by the Eleventh Amendment of the United States Constitution. (R&R, pp. 5-16).

No party has objected to the Magistrate Judge's R&R. Therefore, it must be assumed that the parties are satisfied with its conclusions. Any further review by this Court would be a duplicative and inefficient use of the Court's limited resources. Thomas v. Arn, 474 U.S. 140 (1985); Howard v. Secretary of Health and Human Services, 932 F.2d 505 (6th Cir. 1991); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

Accordingly, Magistrate Judge McHargh's R&R is adopted. The defendants' Motion for Judgment on the Pleadings is granted in part and denied in part. This matter will proceed on Mr. Risner's USERRA claim only against Sharon Haines, Regional Administrator of the ODRC, and Harry Hageman, Deputy Director of the Adult Parole Authority of the ODRC, in their individual capacities.

Party counsel will make themselves available on 28 May 2008 at 10:00 a.m. for a Court initiated telephonic conference to address scheduling discovery in this matter.

IT IS SO ORDERED.

/s/Lesley Wells
UNITED STATES DISTRICT JUDGE

Dated: 20 May 2008

¹Defendant Jill Goldhart was dismissed by Court Order on 24 April 2007 for failure to properly serve under Fed. R. Civ. P. 4(m). (Doc. 8)